

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 14841 of 2005
Date of decision 23 .4.2007

Balwant Singh

.. Petitioner

Versus

Punjab Agricultural University, Ludhiana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.Sharwan Sehgal, Advocate for the petitioner
Ms. Bindu Goel, Advocate
Mr.Deepak Agnihotri, Advocate

M.M.Kumar, J.

The instant petition filed under Article 226 of the Constitution prays for quashing order dated 27.9.2004 (Annexure P.30) passed by respondent no.3 inflicting the punishment of reducing 1/3rd pension of the petitioner and also quashing appellate order dated 23.5.2005 (Annexure P.32) passed by respondent no.2 rejecting the appeal of the petitioner.

Brief facts of the case are that the petitioner joined Punjab Agricultural University, Ludhiana on 2.6.1965 and retired on attaining the age of superannuation on 30.6.1997 as Extension Specialist (Youth Programme). After his retirement Pension Payment order no. 859 dated 19.11.1998 (Annexure P.1) was issued to him. On 12.9.2002(Annexure P.2) the petitioner was issued charge sheet under clause 2.4 of Statute regarding Pension and Provident Fund Part A (Pension Scheme) and Pension Rules 11.3 to 11.5 (Chapter II General Provision relating to grant of pension) of Punjab Agricultural University asking him to explain why 1/3rd pension be not reduced. The petitioner was not supplied documents inspite of the request dated 26.9.2002 and 3.10.2002 (Annexure P.3). The

petitioner, while denying all the charges, submitted his reply dated 3.10.2002 (Annexure P.5) under protest. Vide letter dated 11.10.2002 (Annexure P.6) an Enquiry Officer was appointed to hold enquiry into the charges levelled against the petitioner. The petitioner was directed to appear before the Enquiry Officer, Dr. Darshan Singh on 25.10.2002 (Annexure P.7). He objected to the appointment of Dr. Darshan Singh as an Enquiry Officer because the petitioner had expressed the apprehension that he would do Dr. Aulakh's bidding as the petitioner in his complaint to the Chief Minister had alleged that Dr. Darshan Singh had been bestowed undue favours by Dr. K.S.Aulakh, Vice Chancellor. The objection raised by the petitioner was rejected vide letter dated 25.10.2002 (Annexure P.12). On 6.11.2002, the petitioner again represented to the Vice Chancellor that the enquiry conducted by Dr. Darshan Singh would be nothing but a farce because Dr. Darshan Singh was not an impartial person and he nursed ill-will against the petitioner. On 21.11.2002 (Annexure P.14), the petitioner received a show cause notice asking him as to why his 1/3rd pension should not be reduced as the Enquiry Officer had held him guilty of the charges levelled against him. The petitioner replied to the show cause notice on 19.12.2002 (Annexure P.16). The Vice Chancellor, without considering the reply of the petitioner, reduced the pension by 1/3rd. However, vide letter dated 31.12.2002 the petitioner was informed that the order dated 23.12.2002 reducing his pension had been withdrawn. Petitioner received another letter dated 31.12.2002 wherein it was alleged that orders for reduction of his 1/3rd pension were withdrawn till the receipt of his reply to the show cause notice and its consideration. Ultimately on 14.2.2003 (Annexure P.23), the petitioner received a letter informing that the Vice

Chancellor had reduced his pension by 1/3rd. Aggrieved against the order dated 14.2.2003, the petitioner preferred an appeal on 10.3.2003 before respondent no. 2 (Annexure P.24). The appeal was rejected on 28.3.2003 (Annexure P.25). The orders dated 10.3.2003 and 28.3.2003 were challenged by the petitioner in the High Court by way of CWP No. 8163 of 2003. A Division Bench of this Court on 5.7.2004 quashed the orders dated 10.3.2003(Annexure P.23) and 28.3.2003 (Annexure P.25) and remanded the case back to the respondents to take a fresh decision in accordance with law after giving an opportunity of hearing to the petitioner. Respondent no.3 vide order dated 27.9.2004 (Annexure P.30) again reduced 1/3rd pension of the petitioner. He again filed an appeal on 24.11.2004 (Annexure P.31) which was rejected on 23.5.2005 (Annexure P.32).

In the written statement it is asserted that respondent no.3 under Rule 11.3 (II.3) of Chapter II of the General Provisions relating to grant of Pension of the Statutes regarding Pension and Provident Funds and Pension Rules is endowed with the power to reduce the pension of the delinquent official , in the case of grave misconduct committed. Therefore it is claimed that the impugned order is perfectly valid and in accordance with the Rules. Rule II.3 of the Rules is clear and says that if an employee of the University is found guilty of grave misconduct then in that eventuality his pension can be withheld/withdrawn or reduced. The petitioner has been found guilty of grave misconduct as he indulged in such activities.

After hearing learned counsel for the parties and going through the averments made in the petition, we are of the view that the petitioner retired on attaining the age of superannation on 30.6.1997 and a show cause notice was issued to him on 12.9.2002 i.e. after a gap of five years and

punishment has been inflicted on 27.9.2004 (Annexure P.30) i.e. after a gap of more than seven years.

The question before this Court is as to whether the disciplinary proceedings have been held against the petitioner in accordance with the procedure established by law and the rules. The Enquiry Officer in his report has observed that the petitioner has failed to appear before him despite opportunity granted. On the account of his absence from the inquiry, it has been implied that he did not wish to say anything in his defence against the list of charges and statement of allegations conveyed to him by the Vice Chancellor. The Enquiry Officer has concluded as under:-

“ Dr. Balwant Singh, ex-Extension Specialist (YP) retired from the University service w.e.f. 30.6.1997 on attaining the age of superannuation. He is getting pension since 1.7.1997 vide PPO No. 859. Future good conduct is an implied condition for every grant of pension in the University. Dr. Balwant Singh through various press releases has criticised the working of the University, challenged the decisions of Board of Management, Academic council and made allegations against honourable members of Board of Management, University authorities and other renowned scientists attached with the University (copies of the press releases corresponding to the various charges enclosed F/2 to F/7). It is concluded that these press releases issued by Dr. Balwant Singh are not based on facts but had been issued by him with malafide intention to criticise the working of the University, Executive Authority and with intention to challenge the decisions of the competent

authorities/ bodies of the University and to tarnish the University image. This is not a healthy practice but amounts to grave misconduct on the part of Dr. Balwant Singh, ex-Extension Specialist (YP). In case Dr. Balwant Singh had any grievance against any of the decisions taken by the authorities/ bodies of the University, he had different forums/ channels to air out such grievances and getting redressal. He, instead of adopting democratic process/ means available, approached the Press frequently at his will and criticised the working of the University/ challenging the duly approved decisions of the authorities or various statutory bodies of the University has been proved with evidences/ facts available and having done it with malafide intention, it amounts to grave misconduct on his part. Hence, Dr. Balwant Singh has made himself liable for disciplinary action.”

It is appropriate to mention that mere absence of the petitioner from the inquiry proceedings would not result into assumption that the petitioner has admitted all the allegations. Even then the Enquiry Officer was required to proceed with the inquiry ex parte and by calling upon the Presenting Officer to produce documents and witnesses. After recording his satisfaction on the basis of the evidence produced, the Enquiry Officer could have recorded the finding which have been presumed to exist against the petitioner. Moreover, copy of the inquiry report has not been supplied to the petitioner before issuing the show cause notice by the Punishing Authority concluding therein that the findings recorded by the Enquiry Officer were in order and the Punishing Authority had expressed its

agreement with those findings. It is now well settled that where the Punishing Authority is itself not an inquiring authority then a copy of the inquiry report is required to be furnished to the delinquent officer first so as to persuade the Punishing Authority to reject the findings. This is now considered as part of principles of natural justice. For the aforementioned proposition we place reliance on a judgment of Hon'ble the Supreme Court in the case of Managing Director, ECIL v. B. Karunakar, (1993) 4 SCC 727 and 1994 (Supply.) 2 SCC 291.

For the reasons aforementioned, this petition succeeds and accordingly the impugned order dated 27.9.2004 (P-30) is quashed. The petitioner shall be entitled to all consequential benefits. The petitioner is restored his full pension. The arrears from the date of imposition of cut in pension shall be calculated and the same be paid to the petitioner within a period of two months from the date of receipt of certified copy of this order.

The writ petition stands disposed of.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

23 .4.2007
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